S.B. CIVIL WRIT PETITION NO.3229/2005

M/s. Sri Ram & Company

vs.

Assistant Commissioner of Income Tax Circle-II, Bikaner and others.

Date : 12.7.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Suresh Ojha, for the petitioner.

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Heard learned counsel for the petitioner.

Brief facts of the case are that the petitioner submitted return for assessment of his income on 31.10.2002. The order for assessment was passed under Section 143(1) of the Income Tax Act, 1961 (for short "the Act") on 31.3.2003 by the assessing authority, copy of which is placed on record as Annex.2. The petitioner thereafter was served with a notice under Sections 154/155 of the Act which is dated 8.7.2003, copy of which is placed on record as Annex.3. The petitioner submitted reply to the said notice on 26.8.2003. The petitioner thereafter has been served with notice under Section 148 of the Act which is dated 7.12.2004, copy of which is placed on record as Annex.6. Before this, the reasons for issuing notice under Section 148 of the Act have been recorded by the assessing authority which is apparent from the reasons given by the assessing authority and supplied to the petitioner, copy of which is placed on record as Annex.7.

According to learned counsel for the petitioner, the assessing authority failed to initiate proceedings for scrutiny of case of the petitioner as permissible under the provisions of Section 143 of the Act itself within the prescribed time limit and, therefore, to overcome that difficulty of not initiating the proceedings for scrutiny of the petitioner's case, the assessing authority has issued notice under Section 148 of the Act. It is also submitted that the reasons recorded by the assessing authority as supplied to the petitioner clearly reveals that the reasons have not been recorded by the assessing authority himself but those reasons have been supplied by someone else, may be from the department itself but not the reasons recorded by the assessing authority himself. It is also submitted that the reasons have to be recorded before issuing notice under Section 148 of the Act and reasons have been recorded after issuance of the impugned notice to the petitioner. According to learned counsel for the petitioner, therefore, the notice under Section 148 of the Act is wholly without jurisdiction and deserves to be quashed.

I have considered the submissions of learned counsel for the petitioner.

It is clear from Section 143 of the Act itself that the assessing authority is required to pass appropriate order for the income of the assessee and the Proviso to sub-section (2) allows issuance of notice under Section 143 of

the Act but it could have been issued in the petitioner's case before the first day of June, 2003. Section 148 of the Act is an independent provision providing for re-assessment of the income in case it is found that the income as escaped assessment. Section 148 nowhere provides that the assessing authority is required to undertake the procedure which is provided under Section 143(2) of the Act and thereafter only, he can initiate proceedings under Section 148 of the Act.

There is no reason to accept the contention of learned counsel for the petitioner that since the authority failed to initiate the proceedings within the prescribed time as provided under Proviso to Section 143(2) of the Act. There is no factual foundation laid down in the writ petition for saying so. The reasons recorded by the assessing authority for issuing the notice under Section 148 are reasons recorded by the assessing authority and there is no basis for this Court to believe that all those reasons have been recorded by the assessing authority only for the purpose of initiating proceedings under Section 148 of the Act simply because he could not initiate the proceedings under Section 143.

The contention of learned counsel for the petitioner that the language used in the reasons for issuing notice under Section 148 of the Act clearly reveals that the notice was issued prior and thereafter, the reasons have been recorded and the reasons have not been recorded by the

assessing authority himself but he only recorded his satisfaction. This Court is not subscribing the same view because of the simple reason that the reasons are there in the notice and satisfaction has been recorded by the assessing authority in clear and unequivocal terms, therefore, the notice under Section 148 of the Act cannot be said to be without jurisdiction having been issued without recording any reason and has been issued to overcome lapse which the assessing authority has committed in not opening the matter under Section 143(2) of the Act.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

However, it is made clear that all the objections about the reasons recorded by the assessing authority under Section 148 of the Act may be challenged by the petitioner before the same authority i.e. the assessing authority who issued the notice to the petitioner.

(PRAKASH TATIA), J.

S.Phophaliya